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**United Rentals, Inc. and Laborers' Local Union 886,
Laborers' International Union of North America, AFL-CIO.** Case 32-RC-5078

March 31, 2004

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On November 15, 2002, the Regional Director for Region 32 issued a Decision and Direction of Election finding that: (1) a petitioned-for unit of mechanics, yard employees, and drivers, excluding counter employees, the parts associate, and the branch associate at the Employer's San Leandro, California facility, is appropriate; and (2) mechanic foreman Sweat be permitted to vote subject to challenge. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review arguing that the smallest appropriate is a facility-wide unit of the San Leandro facility employees. The Petitioner filed an opposition to the Employer's request for review. By Order dated January 29, 2003, the Board granted the Employer's request for review.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record, we reverse the Regional Director's finding that the petitioned-for unit is appropriate and find in agreement with the Employer that the smallest appropriate unit must include all the employees at the San Leandro facility.

Facts

The Employer is engaged in the retail and nonretail rental of equipment. The Employer rents a variety of equipment to homeowners and small-to-mid-size contractors. The San Leandro facility operates 7 days a week. The Employer employs three drivers, four mechanics, five yard employees, four counter employees,² one parts associate, and one branch associate. Branch Manager Dale Ferdinandi oversees all operations. Joe DeSoto is the lead yard employee, and Barry Sweat is the

mechanic shop foreman.³ Saiyad Ahmed, the senior counter employee, is the dispatcher of the drivers.

The duties of employees are divided into general areas of responsibility. Drivers make deliveries and pickups of rental equipment using tractor-trailer rigs and pickup trucks. Yard employees load and unload rental equipment in the yard, assist with deliveries, check equipment for rental, and may make deliveries using pickup trucks. Mechanics typically perform preventive maintenance and make repairs on small rental equipment. Counter employees provide customer service, including preparing rental agreements using computers, demonstrating equipment to customers, assisting them with the loading and unloading of equipment, and receiving returned equipment. The parts associate orders parts for the mechanics and obtains merchandise for the Employer's rental showroom.⁴

Notwithstanding this general division of responsibilities, the employees regularly overlap and interchange duties. According to Ferdinandi, who was the only witness to testify regarding the duties of the employees, the Employer relies on everyone to "pitch in" to do various types of jobs, despite their designated classification. Employees therefore perform the duties of different classifications everyday. Although counter employees provide customer service, they also use the Employer's pick-up trucks to make equipment deliveries, a function usually performed by the drivers.⁵ In addition, virtually everyday, counter employees help customers load rental equipment or assist truckdrivers load their deliveries, a function ordinarily performed by the yard employees.⁶ Another counter employee has repaired a number of pieces of equipment that normally would be repaired by the mechanics. The parts associate, formerly a yard employee, delivers equipment and performs yard duties, at times spending the entire day working in the yard. If a yard employee calls in sick on the weekend, a counter employee regularly fills in. In addition, yard employees regularly perform the duties of counter employees, in-

³ The Petitioner contends that Sweat is a statutory supervisor. The Regional Director found the record insufficient to establish that Sweat is a statutory supervisor but permitted him to vote subject to challenge.

⁴ The precise duties of the branch associate classification are unclear from the record.

⁵ Although most counter employees are unlicensed to drive the tractor-trailers, one counter employee, Lopez, is a former tractor-trailer driver (and yard employee) who is licensed. He has hauled tractor-trailer loads five to seven times during the 13 months since Ferdinandi began managing this facility.

⁶ When loading customer vehicles, the counter employees often use forklifts, which ordinarily are operated by yard employees. Counter employees also load the aggregate or concrete bin in the yard, a job performed by the yard employees.

¹ The election was conducted on December 13, 2002, and the ballots were impounded.

² The counter employees also are referred to as sales coordinators.

cluding filling in for counter employees when they are sick.

As indicated, although Ahmed is a counter employee, he also is the dispatcher of the drivers. Ahmed, a former yard employee, coordinates the drivers and tells them where to deliver and pick up equipment and what particular sequence or route to use. Ahmed maintains daily radio contact with the drivers.

Branch Manager Ferdinandi handles all hiring, firing, disciplining, and performance evaluations at the San Leandro facility. He oversees all branch employees and schedules all work hours. Although Yard Leadman De Soto assigns work to yard employees and Foreman Sweat to the mechanics, Ferdinandi directly assigns other duties to employees.

All employees receive the same medical, vacation, and sick leave benefits. With the exception of Sweat, who is paid \$22 per hour, wages range from \$11 per hour to \$17.50 per hour, depending on the classification. Counter employees earn from \$16 to \$17.50 per hour, while drivers receive from \$15 to \$17 per hour, and mechanics earn from \$15 to \$16.50 per hour. The parts associate is paid \$13.65 per hour, while yard employees are paid from \$11 to \$13.50 per hour.⁷ All employees except the counter employees are covered by the same profit sharing plan.

All employees begin work between 7 and 8:30 a.m. Employees are subject to the same time and attendance policy. Except for the large rig tractor-trailer drivers who must possess an appropriate driver's license, and the mechanics who must have some experience repairing equipment, most classifications require no special qualifications. Counter employees are trained in the operation of the Employer's computer system.

Analysis

The Regional Director found that the petitioned-for unit of drivers, yard employees, and mechanics is appropriate by emphasizing that even though the excluded counter employees may occasionally deliver equipment or assist with minor repairs, their primary duties are distinctly clerical compared with unit employees whose duties involve manual tasks. In addition, the Regional Director found that the only evidence of interchange is limited to occasional instances that are insufficient to require the inclusion of the counter employees, parts associate, and branch associate in the petitioned-for unit.

We find, contrary to the Regional Director, that the overwhelming and undisputed evidence of overlapping duties and interchange between the excluded employees and the petitioned-for employees, and of their common

terms and conditions of employment, demonstrates that the petitioned-for unit is not an appropriate unit. We find therefore that the counter employees, parts associate, and branch associate must be included in the petitioned-for unit, and that only an overall unit of employees at the Employer's San Leandro facility is appropriate.

Although the employees in each classification at this facility have a designated function, they all "pitch in" and perform the functions of different classifications when necessary. This method of operation has resulted in the excluded employees regularly and frequently performing duties of the employees in the petitioned-for unit. Thus, the undisputed testimony of Branch Manager Ferdinandi clearly demonstrates that the counter employees, while responsible for customer service, have regularly performed the functions of the petitioned-for yard employees, drivers, and even mechanics. Similarly, the parts associate, while responsible for the Employer's inventory of parts and equipment, has performed the duties of yard employees and drivers. Counter employees also substitute for yard employees who are ill. Conversely, yard employees have performed the duties of counter employees and filled in for them when they are sick. Further evidence of the functional overlap in the Employer's operation is the role of counter employee Ahmed, who also serves as the dispatcher of the drivers. Ahmed, a former yard employee, dispatches the drivers on their deliveries and pickups, and maintains daily radio contact with them.

We disagree with the Regional Director's narrow assessment of the overlapping work and interchange as "occasional" or "limited" and his finding that the work of the excluded employees is "distinctly clerical." The undisputed testimony of Ferdinandi demonstrates that the performance of petitioned-for unit work by the excluded employees occurs regularly and in many instances every day. Furthermore, the extent of the performance of the manual functions of unit employees by the excluded employees undermines the Regional Director's finding that their duties are distinctly clerical.⁸

The excluded employees also share common terms and conditions of employment with the employees in the petitioned-for unit. The excluded employees work similar hours and are subject to the same time and attendance policy as the petitioned-for employees. Furthermore, all employees at the facility are subject to common labor relations authority and oversight by Branch Manager Ferdinandi. Ferdinandi sets all employee work sched-

⁷ The record does not indicate the hourly rate of the branch associate.

⁸ This case, therefore, is distinguishable from *Avis Rent-a-Car System, Inc.*, 132 NLRB 1136 (1961), relied on by the Regional Director, because the excluded counter/rental agents there only occasionally performed the duties of the unit mechanics and delivery personnel.

ules, and he directly assigns duties to employees. All employees receive the same medical and leave benefits. The wages of the excluded counter employees are comparable to the wages of the drivers and most mechanics.⁹ Although the counter employees are covered by a different profit sharing plan from the petitioned-for employees, the parts associate and branch associate are covered by the same plan as the petitioned-for employees. Finally, two counter employees and the parts associate previously worked as yard employees, and one of those counter employees also previously worked as driver.

Accordingly, based on the significant overlapping duties and interchange, common labor relations control, common oversight and assignment of work by Ferdinandi, common hours of work, and similar wages and benefits, we find that the excluded counter employees,¹⁰ the parts associate, and the branch associate¹¹ share such

⁹ Counter employees earn from \$16 to \$17.50 per hour, while drivers earn from \$15 to \$17 per hour and most mechanics earn from \$15 to \$16.50 per hour.

¹⁰ Senior counter employee/dispatcher Ahmed's duties as a dispatcher and his shared terms and conditions of employment with unit employees alone mandates his inclusion in the unit. See, e.g., *Browning Ferris, Inc.*, 275 NLRB 292 (1985).

¹¹ Although the record is sparse concerning the terms and conditions of employment of the branch associate, we include her in the unit because otherwise, she would be the only unrepresented employee at this facility. See *Chrysler Corp.*, 194 NLRB 183 (1971).

a substantial community of interest with the petitioned-for employees that they must be included in the unit.

The Petitioner has not indicated whether it would be willing to proceed to an election in a unit different from the unit found appropriate by the Regional Director. We therefore remand the case to the Regional Director.¹²

ORDER

The Regional Director's Decision and Direction of Election is reversed. This case is remanded to the Regional Director for further appropriate action.

Dated, Washington, D.C. March 31, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

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¹² In light of our finding that the petitioned-for unit is not appropriate and our remand of this case to the Regional Director for further action, we find it unnecessary to pass on the supervisory status of Sweat.